



PATENT
Docket No.: 2565/94

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : HAHMANN et al.
SERIAL NO. : 10/052,768
FILED : January 18, 2002
FOR : CLOSURE ELEMENT
GROUP ART UNIT : 1723
EXAMINER : Sun Kim

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Thomas C. Hughes

RESPONSE TO RESTRICTION REQUIREMENT UNDER 35 U.S.C. § 121

SIR:

In response to the Office Action dated March 6, 2003, Applicants provisionally elect with traverse the invention of Group I, i.e., claims 24 to 54. Examination of both groups concurrently is requested, given the commonality of subject matter among the two groups.

The Manual of Patent Examining Procedure (M.P.E.P.) sets forth the requirements for a proper restriction requirement. In particular, the M.P.E.P. states:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP Section 802.01, Section 806.04, Section 808.01) or distinct as claimed (see MPEP Section 806.05 - Section 806.05(i)); and

(B) There must be a serious burden on the examiner if restriction is required (see MPEP Section 803.02, Section

806.04(a) - Section 806.04(i), Section 808.01(a), and Section 808.02).

(M.P.E.P. § 803 (emphasis added)). The fact that *both* criteria must be satisfied is made all the more clear by the following statement in the M.P.E.P.:

If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions.

(M.P.E.P. § 803 (emphasis added)). Thus, if the subject matter of the pending claims is such that there would be no serious burden on the examiner to search and examine all of the pending claims at the same time, the examiner is to do so, *even if* the pending claims are drawn to independent or distinct inventions.

The Office Action states that "Groups I [(i.e., claims 24 to 54)] and II [(i.e., claims 55 to 58)] are related as process and apparatus for its practice" but contends that "the apparatus as claimed can be used to practice another and materially different process such as sealing joints and connectors." Office Action at p. 2. However, the apparatus as **claimed** in claim 24 is "[a] closure device for sterile connection of a filter module for dialysis, hemofiltration or ultrafiltration", while the apparatus as **claimed** in claim 40 is "[a] closure device for sterile closure of a connection of a filter module for dialysis, hemofiltration or ultrafiltration." Thus, contrary to the Examiner's assertion, the apparatus as claimed clearly states the manner in which the apparatus is used, and the Examiner's assertion of other and materially different processes, i.e., sealing joints and connectors, is unsupported.

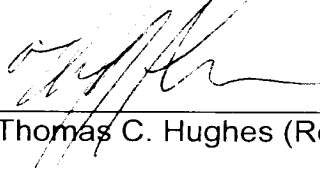
Furthermore, Applicants respectfully maintain that the subject matter of the pending claims is such that there would be no serious burden on the examiner to search and examine all of the pending claims at the same time. Therefore, Applicants respectfully request that the Examiner examine all of the pending claims at the same time.

In view of all of the foregoing, it is respectfully submitted that the restriction requirement is improper, and reconsideration and withdrawal of the restriction requirement is respectfully requested.

Respectfully submitted,
KENYON & KENYON

Dated: April 8, 2003

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